

**PROPOSED DECISION**

Agenda ID #15031 (Rev. 1)

Ratesetting

8/18/16 Item 25

Decision \_\_\_\_\_

**BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA**

In the Matter of the Application of Quality Speaks LLC dba Broadvoice for a Certificate of Public Convenience And Necessity to Provide Limited Facilities-Based and Resold Local Exchange Service in AT&T California, Verizon California, Citizens Telecommunications Company of California, Citizens Telecommunications Company of the Southwest, Frontier Communications of the Southwest, Inc., and Frontier Communications West Coast, Inc. Local Exchange Areas, and IntraLATA and InterLATA Interexchange Telephone Service Statewide.

Application 14-12-012  
(Filed December 17, 2014)

**DECISION GRANTING QUALITY SPEAKS LLC DBA BROADVOICE A  
CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY IN ORDER TO  
PROVIDE RESOLD AND LIMITED FACILITIES-BASED LOCAL EXCHANGE  
SERVICE AND INTEREXCHANGE SERVICE STATEWIDE**

**Summary**

Pursuant to Rule 12.1 of the Commission's Rules of Practice and Procedure, we approve and adopt the Settlement Agreement between Quality Speaks LLC dba Broadvoice and the Safety and Enforcement Division. In addition, pursuant to Public Utilities Code Section 1001, we grant Quality Speaks LLC dba Broadvoice a certificate of public convenience and necessity to provide resold and limited facilities-based local exchange telecommunications services in

the territories of Pacific Bell Telephone Company d/b/a AT&T California, Frontier California Inc., Citizens Telecommunications Company of California, Inc. d/b/a Frontier Communications of California, and Consolidated Communications of California Company, and interexchange services throughout California subject to the terms and conditions set forth in the Ordering Paragraphs.

This proceeding is closed.

## **1. Background**

On December 17, 2014, Quality Speaks LLC dba Broadvoice (Quality), a limited liability corporation in California filed an application for a certificate of public convenience and necessity (CPCN) to provide resold and limited facilities-based telecommunications services in the service territories of Pacific Bell Telephone Company d/b/a AT&T California (AT&T), Frontier California Inc. (Frontier California),<sup>1</sup> Citizens Telecommunications Company of California, Inc. d/b/a Frontier Communications of California (Frontier Communications), and Consolidated Communications of California Company (Consolidated, formerly SureWest Telephone),<sup>2</sup> and interexchange telephone service statewide.

Quality proposes to provide local exchange and interexchange services to business and residential customers via local and interexchange service, as well as switched access service, long distance resale, advanced services and high-speed digital service.

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<sup>1</sup> Frontier California was formerly Verizon California, Inc. (Verizon). As of April 1, 2016, Verizon's operations in California were acquired and are now operated by Frontier California, Inc. pursuant to D.15-12-005.

<sup>2</sup> SureWest Telephone changed its name to Consolidated Communications of California Company as of January 1, 2016.

Quality's principal place of business is located at 20847 Sherman Way, Winnetka, CA 91306.

The Commission's Safety and Enforcement Division (SED) filed a protest on January 20, 2015. SED asserts that Quality violated Rule 1.1 of the Commission's Rules of Practice and Procedure by omitting information regarding its regulatory history. Additionally, SED asserts that Quality also violated Pub. Util. Code § 285, which requires Voice over Internet Protocol (VoIP) providers to register with the Commission in order to report and remit Universal Service Fund Surcharges. SED requested the Commission set an evidentiary hearing to consider the evidence and the imposition of a penalty before making a final decision on the Application.

On April 6, 2015, Quality filed a Motion for Withdrawal of its Application.

By Notice of Prehearing Conference (PHC) dated April 9, 2015, a PHC was set for April 22, 2015.

On April 21, 2015, SED filed a Response opposing Quality's Motion.

On April 22, 2015, a PHC was held to determine the parties, positions of the parties, issues, and other procedural matters. Quality did not attend the PHC. Quality's Motion to Withdraw Application 14-12-012 was denied at the PHC.

The Assigned Commissioner's Ruling and Scoping Memo was issued June 4, 2015.

On June 10, 2015, Quality filed its Opening Brief.

On June 19, 2015, SED filed a Motion for an Order Compelling Production of Information and Documents pursuant to staff data requests.

On July 10, 2015, an E-mail Ruling granted SED's request for a three-week extension to file their Opening Brief. The request was made to allow SED and Quality to engage in settlement negotiations.

A Joint Motion for approval of Settlement Agreement was filed July 31, 2015.

On November 13, 2015, an E-mail Ruling directed Quality to provide financial information to satisfy the requirements for available capital as required by Decision (D.) 95-12-056, Appendix C.

Quality responded to the E-mail Ruling on November 17, 2015 fulfilling the requirement.

On March 9, 2016, an E-mail Ruling directed Quality to file a declaration under penalty of perjury and in compliance with Section 2015.5 of the California Code of Civil Procedure stating that:

- a) Quality Speaks LLC dba Broadvoice is a common carrier as defined in Section 153 of the Federal Telecommunications Act of 1996 (Act) and is eligible to interconnect with the public switched telephone network pursuant to Sections 251 and 252 of the Act; and
- b) If granted a CPCN, Quality Speaks LLC dba Broadvoice will operate as a telephone corporation as defined in Section 234(a) of the California Public Utilities Code (Code) and obey the Code, and all of the Commission's rules, decisions and orders applicable to telephone corporations.

Quality responded to the E-mail Ruling fulfilling the requirement.

## **2. Settlement Agreement**

On July 31, 2015, Quality and SED (Parties) filed a motion for approval of a Settlement Agreement. The Parties jointly agreed to a set of facts that formed the basis for entering into the Settlement Agreement attached as Attachment E of this decision.

The Settlement Agreement resolves all issues in SED's protest and investigation. Quality acknowledges that Pub. Util. Code § 285 requires VoIP providers to submit surcharges and that Quality Speaks failed to do so from 2012 to January 2015. Quality Speaks states that it will fully meet its regulatory and legal obligations in the future. Quality Speaks also acknowledges that it failed to disclose its full regulatory history, specifically, that its CEO, Jim Murphy, had previously been the CEO of another company, Rampage Cellular, which lost its competitive carrier authority in 2004 under Resolution T-16875. It failed to make this disclosure because Mr. Murphy sold Rampage Cellular in 1999 and therefore he was unaware that the Commission had revoked Rampage Cellular's authority.

In order to resolve the legal issues raised in the SED Protest, the Settlement Agreement dictates that Quality shall pay retroactive state-mandated public purpose program surcharges and the associated interest penalty in the sum of \$40,866.16 as detailed below. According to the Settlement, Quality shall pay retroactive surcharges in the amount of \$34,902.57 and \$5,983.59 in interest penalty for the 37-month period that it failed to make these payments.

Additionally, in order to resolve Quality's violation of Rule 1.1, it must submit a notarized affidavit attesting to the fact that Mr. Murphy sold Rampage Cellular in 1999 within 30 calendar days from the date of the Commission's approval of the Settlement Agreement.

### **3. Discussion**

The Commission has historically favored settlements as a means of resolving contested issues where the settlement is reasonable in light of the whole record, consistent with the law, and in the public interest.<sup>3</sup>

The record in this proceeding consists principally of the Application, SED's protest, and the proposed Settlement Agreement. The Settlement provides a clear description of the facts at issue in this application. As a sponsor of the Settlement, Quality acknowledges that it failed to disclose regulatory actions to the Commission regarding Rampage Cellular. Additionally, Quality acknowledges that it failed to remit surcharges from 2012 to January 2015 (a 37-month period), as required under Pub. Util. Code § 285.<sup>4</sup> The Settlement also commits Quality Speaks to fully meet its regulatory and legal obligations in the future.

Approving the Settlement Agreement holds Quality accountable for the consequences of its prior violations of Commission rules by assessing retroactive state-mandated public purpose surcharges and the associated interest penalty payments. In assessing the reasonableness of the proposed \$40,886.15 retroactive state-mandated public purpose surcharge and associated interest penalty payment required by the Settlement, we look to the criteria in D.98-12-075, Attachment B, which provided guidance in similar cases. We consider: 1) the severity of the economic or physical harm resulting from the violation; 2) the utility's conduct to prevent, detect, disclose, and rectify the violation; 3) the

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<sup>3</sup> See Commission's Rules of Practice and Procedure 12.1.

<sup>4</sup> As of February 3, 2015, Quality Speaks has registered with the Commission and remits surcharges.

utility's financial resources; 4) the public interest involved; 5) the totality of the circumstances; and 6) Commission precedents.

Based on these criteria, we conclude that the \$40,886.15 retroactive state-mandated public purpose program surcharges and associated interest penalty payment are reasonable.

The Settlement Agreement does not contravene any statutory provisions or prior Commission decisions, and it provides sufficient information for the Commission to discharge future regulatory obligations with respect to the parties and their interests and obligations. The Settlement Agreement does not constitute a precedent regarding any principle or issue in this proceeding or any future proceeding. Quality affirms that it will fully meet its regulatory and legal obligations and its responsibilities to its customers and members of the public in California in the future. Approval of the Settlement Agreement is consistent with the Commission's policy of supporting resolution of disputed matters through settlement, and avoids the time, expense, and uncertainty of evidentiary hearings and further litigation. The benefits of approving this Settlement, including Quality's payment of retroactive state-mandated public purpose program surcharges and the associated interest penalty to the Commission, is a reasonable resolution in comparison to continued litigation and the associated costs. Granting this application will benefit the public interest by expanding the availability of technologically advanced telecommunications services within the state.

We thus find the Settlement Agreement is reasonable in light of the record, consistent with the law, and in the public interest. Accordingly, we adopt the Settlement Agreement as the basis for granting Quality a CPCN to provide limited facilities-based and resold local exchange and interexchange service in

California. Approval of Quality's application is conditioned on its compliance with the terms of the Settlement Agreement.

#### **4. Jurisdiction**

Pub. Util. Code § 216(a) defines the term "Public utility" to include a "telephone corporation," which in turn is defined in Pub. Util. Code § 234(a) as "every corporation or person owning, controlling, operating, or managing any telephone line for compensation within this state."

Quality proposes to provide local exchange, interexchange service, and switched access service.

Quality provided certification that it is a Common Carrier as defined by Section 153 of the Federal Telecommunications Act of 1996 (Act) eligible to interconnect with the public switched telephone network pursuant to Sections 251 and 252 of the Act, and that if granted a CPCN, it will operate as a telephone corporation under Pub. Util. Code Section 234(a), and obey the Code and all Commission rules, decisions, and orders applicable to telephone corporations.

#### **5. California Environmental Quality Act (CEQA)**

The CEQA requires the Commission act as the designated lead agency to assess the potential environmental impact of a project in order that adverse effects are avoided, alternatives are investigated, and environmental quality is restored or enhanced to the fullest extent possible. Since Quality states that it does not intend to construct any facilities other than equipment to be installed in existing buildings or structures, it can be seen with certainty that there is no possibility that granting this application will have an adverse impact upon the environment. Before it can construct facilities other than equipment to be



installed in existing buildings or structures, Quality must file for additional authority, and submit to any necessary CEQA review.

## **6. Financial Qualifications**

To be granted a CPCN, an applicant for authority to provide limited facilities-based and resold local exchange and interexchange services must demonstrate that it has a minimum of \$100,000 cash or cash equivalent to meet the firm's start-up expenses.<sup>5</sup> An applicant must also demonstrate that it has sufficient additional resources to cover all deposits required by local exchange carriers and/or interexchange carriers in order to provide the proposed service.<sup>6</sup> In the application, Quality provided supporting documentation that \$100,000 plus an amount equal to the deposit required by AT&T, Verizon, Citizens, and SureWest would be available to Quality for one year following certification. Since Quality has provided documentation that it possesses a minimum of \$100,000 that is reasonably liquid and available, it has demonstrated that it has sufficient funds to meet its start-up expenses and has fulfilled this requirement.

Quality proposed to initially interconnect with AT&T, Frontier California, Frontier Communications, and Consolidated. As stated above, Quality has provided documentation that it has the funds available for the deposit required by AT&T, Frontier California, Frontier Communications, and Consolidated. Therefore, no additional resources are required at this time to cover deposits.

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<sup>5</sup> The financial requirement for Competitive Local Exchange Carriers (CLEC) is contained in D.95-12-056, Appendix C. The financial requirement for Non-Dominant Interexchange Carriers (NDIEC) is contained in D.91-10-041.

<sup>6</sup> The requirement for Competitive Local Carrier (CLC) applicants to demonstrate that they have additional financial resources to meet any deposits required by underlying Local Exchange Carriers and/or IECs is set forth in D.95-12-056, Appendix C. For NDIECs, the requirement is found in D.93-05-010.

**7. Technical Qualifications**

To be granted a CPCN for authority to provide local exchange and interexchange service, an applicant must make a reasonable showing of managerial and technical expertise in telecommunications or a related business.<sup>7</sup>

Quality acknowledges that its application failed to disclose its full regulatory history, specifically, that its CEO, Jim Murphy, had previously been the CEO of another company, Rampage Cellular, which lost its competitive carrier authority in 2004 under Resolution T-16875. It failed to make this disclosure because Mr. Murphy sold Rampage Cellular in 1999 and therefore he was unaware that the Commission had revoked Rampage Cellular's authority. As such, in order to resolve Quality's Rule 1.1 violation, Quality must submit a notarized affidavit attesting to the fact that Mr. Murphy sold Rampage Cellular in 1999 within 30 calendar days of the date of the Commission's approval of the Settlement Agreement. Aside from Mr. Murphy, Quality verified that no one associated with or employed by Quality as an affiliate, officer, director, partner, or owner of more than 10% of Quality was previously associated with a telecommunications carrier that filed for bankruptcy, was sanctioned by the Federal Communications Commission or any state regulatory agency for failure to comply with any regulatory statute, rule, or order, or has been found either civilly or criminally liable by a court of appropriate jurisdiction for a violation of § 17000, et seq. of the California Business and Professions Code, or for any actions which involved misrepresentations to consumers, nor is currently under investigation for similar violations.

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<sup>7</sup> D.95-12-056 at Appendix C, Rule 4.A.

Given the Settlement Agreement's provision for submittal of an affidavit regarding Mr. Murphy, we find that Quality is in compliance with the requirements of D.95-12-056.

## **8. Tariffs**

Commission staff reviewed Quality's draft tariffs for compliance with Commission rules and regulations. Quality has no deficiencies in its draft tariffs.

## **9. Map of Service Territory**

To be granted a CPCN for authority to provide local exchange service, an applicant must provide a map of the service territories it proposes to serve.<sup>8</sup> In its Response, Quality provided a map of the location of its proposed service territory, in compliance with this requirement.

## **10. Expected Customer Base**

Quality provided its estimated customer base for the first and fifth years of operation in Exhibit F of its application. Therefore, Quality has complied with this requirement.

## **11. Request for Treatment as a Non-dominant Carrier**

Applicant requests treatment as a non-dominant interexchange carrier, which would include exemption from the requirements of Pub. Util. Code §§ 816-830 concerning stocks and security and § 851 concerning the encumbrance and transfer of utility property. The Commission detailed its rules regarding exemption of non-dominant carriers in D.85-01-008, and subsequently modified in D.85-07-081 and D.85-11-044. We grant Applicant's request for

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<sup>8</sup> D.95-12-056 at Appendix C, Rule 4.E.

non-dominant interexchange carrier status, provided that they follow all rules detailed in the above referenced decisions.<sup>9</sup>

## **12. Safety Considerations**

With the adoption of the *Safety Policy Statement of the California Public Utilities Commission* on July 10, 2014, the Commission has, among other things, heightened its focus on the potential safety implications of every proceeding. We have considered the potential safety implications here. We feel satisfied that Quality will meet the Commission's minimum safety goals and expectations of CLEC's because: (1) Quality has taken steps to meet the financial requirements as set forth in this decision for a facilities-based CLEC, and (2) Quality is a public utility that is required pursuant to Pub. Util. Code § 451 to "... furnish and maintain such adequate, efficient, just and reasonable service, instrumentalities, equipment, and facilities, including telephone facilities ... as are necessary to promote the safety, health, comfort, and convenience of its patrons, employees, and the public."

## **13. Conclusion**

The Commission has historically favored settlements as a means of resolving contested issues where the settlement is reasonable in light of the whole record, consistent with the law, and in the public interest. We find the Settlement Agreement to be (1) reasonable in light of the record; (2) consistent with the law; and (3) in the public interest. The record of this proceeding consists principally of the Application, the Protest of SED, and the Joint Motion to approve the Settlement Agreement. We find that the record is adequate to

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<sup>9</sup> While the Commission has granted exemption from §§ 816 - 830 to others, exemption from §§ 851 - 854 has not been granted previously and is not granted here.

enable us to determine that the Settlement meets our standards for approval of settlements. Therefore the Settlement Agreement is approved.

We also conclude that the application conforms to our rules for certification as a competitive local exchange and interexchange carrier. Accordingly, we grant Quality a CPCN to provide resold local exchange telecommunications service in the service territory of AT&T, Verizon, Citizens, and SureWest and interexchange service in California subject to compliance with the terms and conditions set forth in the Ordering Paragraphs.

The CPCN granted by this decision provides benefits to Quality and corresponding obligations. Quality receives authority to operate in the prescribed service territory, it can request interconnection with other telecommunications carriers in accordance with Section 251 of the Federal Communications Act (47 U.S.C. 251), and it receives access to public rights of way in California as set forth in D.98-10-058 subject to the CEQA requirements set forth in this decision. In return, Quality is obligated to comply with all applicable Public Utilities Codes and Commission Rules, General Orders (GO), and decisions applicable to telecommunications carriers providing approved services. The applicable Codes, Rules, etc. include, but are not limited to consumer protection rules, tariffing, and reporting requirements. Moreover, Quality is obligated to pay all Commission prescribed user fees and public purpose program surcharges as set forth in the Appendix B of this decision, to comply with CEQA, and to adhere to Pub. Util. Code § 451 which states that every public utility

...shall furnish and maintain such adequate, efficient, just, and reasonable service, instrumentalities, equipment, and facilities, including telephone facilities, as defined in Section 54.1 of the Civil Code, as are necessary to promote the

safety, health, comfort, and convenience of its patrons, employees, and the public.

#### **14. Categorization and Need for Hearings**

In Resolution ALJ 176-3349, dated January 15, 2015, the Commission preliminarily categorized this application as ratesetting, and preliminarily determined that hearings were not necessary. On January 20, 2015, the SED filed a protest to the application. Given the Settlement between Quality and SED, a hearing is not necessary and we do not change the preliminary determinations.

#### **15. Comments on Proposed Decision**

The proposed decision of Administrative Law Judge (ALJ) Duda in this matter was mailed to the parties in accordance with Section 311 of the Public Utilities Code and comments were allowed under Rule 14.3 of the Commission's Rules of Practice and Procedure. Comments were filed on August 8, 2016. The comments in conjunction with the requested declaration on behalf of Quality establish Quality is a telephone corporation and a public utility subject to our jurisdiction. Therefore, the proposed decision is revised to grant the application for a CPCN.

#### **16. Assignment of Proceeding**

Liane M. Randolph is the assigned Commissioner and Dorothy Duda is the assigned ALJ.

#### **Findings of Fact**

1. Notice of the application appeared on the Daily Calendar on December 19, 2014. SED filed a protest January 20, 2015. A hearing is not required.

2. Quality is a telephone corporation and a public utility as defined in Pub. Util. Code §§ 234(a) and 216(a).

3. Quality acknowledges failure to disclose regulatory actions to the

Commission regarding Rampage Cellular.

4. Quality acknowledges that it failed to remit surcharges from 2012 to January 2015, as required under Pub. Util. Code § 285.

5. Quality and the SED, the only parties in this proceeding, negotiated and reached settlement of contested issues. A Joint Motion for approval of a Settlement Agreement was filed on July 31, 2015.

6. The Settlement Agreement between Quality and SED is: (1) reasonable in light of the record; (2) consistent with the law; and (3) in the public interest. The Settlement Agreement conveys sufficient information to permit the Commission to discharge its future regulatory obligations with respect to the parties and their interests.

7. Approving the Application and the Settlement Agreement is the relief requested by the parties and this relief is not opposed by any party in this proceeding.

8. Quality has a minimum of \$100,000 of cash or cash equivalent that is reasonably liquid and readily available to meet its start-up expenses.

9. Quality has sufficient additional cash or cash equivalent to cover deposits that may be required by other telecommunications carriers in order to provide the proposed service.

10. Quality management possesses sufficient experience, knowledge, and technical expertise to provide local exchange and interexchange services to the public.

11. Quality acknowledges that it failed to disclose its full regulatory history, specifically, that its CEO, Jim Murphy, had previously been the CEO of another company, Rampage Cellular, which lost its competitive carrier authority in 2004 under Resolution T-16875. It failed to make this disclosure because Mr. Murphy

sold Rampage Cellular in 1999 and therefore he was unaware that the Commission had revoked Rampage Cellular's authority.

12. To resolve Quality's Rule 1.1 violation, Quality must submit a notarized affidavit attesting to the fact that Mr. Murphy sold Rampage Cellular in 1999 within 30 calendar days of the date of the Commission's approval of the Settlement Agreement.

13. Aside from Mr. Murphy, no one associated with or employed by Quality as an affiliate, officer, director, partner, or owner of more than 10% of Quality was: previously associated with a telecommunications carrier that filed for bankruptcy; was sanctioned by the Federal Communications Commission or any state regulatory agency for failure to comply with any regulatory statute, rule, or order; or was previously associated with any telecommunication carrier that has been found either civilly or criminally liable by a court of appropriate jurisdiction for a violation of § 17000, et seq. of the California Business and Professions Code, or for any actions which involved misrepresentations to consumers, nor is currently under investigation for similar violations.

14. Quality's draft tariffs comply with the Commission's requirements.

15. Quality provided a map of the location of its proposed service territory.

16. Quality provided an estimate of its customer base for the first and fifth year of operation.

17. Quality owes past state-mandated public purpose program surcharges and the associated interest penalty to the Commission in the amount of \$40,866.15.

### **Conclusions of Law**

1. Quality should be granted a CPCN to provide resold and limited facilities-based local exchange telecommunications service in the service



territories of AT&T, Verizon, Citizens, and SureWest and interexchange service in California, subject to the terms and conditions of the Settlement Agreement set forth in Attachment E.

2. The Settlement Agreement should be approved.

3. Quality should be required to pay a total of \$34,902.57 in past due surcharges and \$5,983.59 in interest penalty to Commission.

4. Quality, once granted a Commission, should be subject to the applicable Commission rules, decisions, GOs, and statutes that pertain to California public utilities.

5. Quality should be granted non-dominant carrier status, subject to Commission rules and regulations as detailed in D.85-01-008 and modified in D.85-07-081 and D.85-11-044.

## **O R D E R**

### **IT IS ORDERED** that:

1. A certificate of public convenience and necessity is granted to Quality Speaks LLC dba Broadvoice to provide resold and limited facilities-based local exchange telecommunications services in the territories of Pacific Bell Telephone Company d/b/a AT&T California, Verizon California Inc., Citizens Telecommunications Company of California, Inc. d/b/a/ Frontier Communications of California, and SureWest Telephone, and interexchange service in California, subject to the terms and conditions set forth below.

2. The July 31, 2015 Joint Motion by Quality Speaks LLC dba Broadvoice and the Commission's Safety and Enforcement Division, for Commission Adoption of Settlement Agreement, is granted and the Settlement Agreement, Attachment E to this decision, is approved.

3. Pursuant to the terms of the Settlement Agreement, as set forth in Attachment E, Quality Speaks LLC dba Broadvoice shall pay retroactive state-mandated public purpose program surcharges and the associated interest penalty in the sum of \$40,866.16 no later than 30 calendar days from the effective date of this decision. Payment shall be made payable to the California Public Utilities Commission and mailed or delivered to the Commission's Fiscal Office at 505 Van Ness Avenue, Room 3000, San Francisco, CA 94102. The check or money order shall include the statement "For deposit to the Commission program budgets per Decision \_\_\_\_\_."

4. Within 30 days of the effective date of this decision, Quality Speaks LLC dba Broadvoice shall file in this proceeding, and the Commission's Docket Office shall accept, a notarized affidavit attesting to the fact that Mr. Murphy sold Rampage Cellular in 1999.

5. Quality Speaks LLC dba Broadvoice may not offer competitive local exchange services until tariffs are filed with and authorized by this Commission, in accordance with General Order 96-B.

6. The corporate identification number assigned to Quality Speaks LLC dba Broadvoice, U-7291-C, must be included in the caption of all original filings with this Commission, and in the titles of other pleadings filed in existing cases.

7. The certificate granted by this order will expire if not exercised within 12 months of the effective date of this order.

8. Quality Speaks LLC dba Broadvoice must obtain a performance bond of at least \$25,000 in accordance with Decision 13-05-035. The performance bond must be a continuous bond (i.e., there is no termination date on the bond) issued by a corporate surety company authorized to transact surety business in California, and the Commission must be listed as the obligee on the bond. Within five days

of acceptance of its certificate of public convenience and necessity authority, Quality Speaks LLC dba Broadvoice must submit a Tier-1 advice letter to the Director of Communications Division, containing a copy of the license holder's executed bond, and submit a Tier-1 advice letter annually, but not later than March 31, with a copy of the executed bond.

9. Quality Speaks LLC dba Broadvoice must not allow its performance bond to lapse during any period of its operation. Pursuant to Decision 13-05-035, the Commission may revoke a certificate of public convenience and necessity if a carrier is more than 120 days late in providing the Director of the Communications Division a copy of its executed performance bond and the carrier has not been granted an extension of time by the Communications Division.

10. In addition to all the requirements applicable to competitive local exchange carriers and interexchange carriers included in Attachments B, C, and D to this decision, Quality Speaks LLC dba Broadvoice is subject to the Consumer Protection Rules contained in General Order 168, and all applicable Commission rules, decisions, General Orders, and statutes that pertain to California public utilities.

11. Quality Speaks LLC dba Broadvoice must file, in this docket, a written acceptance of the certificate granted in this proceeding within 30 days of the effective date of this order.

12. Quality Speaks LLC dba Broadvoice must annually pay the user fee and public purpose surcharges specified in Attachment B. Per the instructions in Exhibit E to Decision 00-10-028, the Combined California Public Utilities Commission Telephone Surcharge Transmittal Form must be submitted even if the amount due is \$0. Applicant must pay a minimum user fee of \$100 or 0.18%

of gross intrastate revenue, whichever is greater. Under Public Utilities Code Section 405, carriers that are in default of reporting and submitting user fees for a period of 30 days or more will be subject to penalties including suspension or revocation of their authority to operate in California.

13. Prior to initiating service, Quality Speaks LLC dba Broadvoice must provide the Commission's Consumer Affairs Branch with the name and address of its designated contact person(s) for purposes of resolving consumer complaints. This information must be updated if the name or telephone number changes, or at least annually.

14. Prior to initiating service, Quality Speaks LLC dba Broadvoice must provide the Commission's Communications Division with the name and address of its designated regulatory/official contact persons(s). This information must be provided electronically, using the "Regulatory/Official Contact Information Update Request" found at

<http://www.cpuc.ca.gov/PUC/telco/Information+for+providing+service/>.

This information must be updated if the name or telephone number changes, or at least annually.

15. Quality Speaks LLC dba Broadvoice must notify the Director of the Communications Division in writing of the date that local exchange service is first rendered to the public, no later than five days after service first begins.

16. Quality Speaks LLC dba Broadvoice must file an affiliate transaction report with the Director of the Communications Division, in compliance with Decision 93-02-019, on a calendar year basis using the form contained in Attachment D.

17. Quality Speaks LLC dba Broadvoice must file an annual report with the Director of the Communications Division, in compliance with General

Order 104-A, on a calendar-year basis with the information contained in Attachment C to this decision.

18. Quality Speaks LLC dba Broadvoice must file a tariff within 12 months of the effective date of this order, or its certificate will be cancelled.

19. Application 14-12-012 is closed.

This order is effective today.

Dated \_\_\_\_\_, at San Francisco, California.

# **ATTACHMENT A**

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**(END OF ATTACHMENT A)**

**ATTACHMENT B****REQUIREMENTS APPLICABLE TO COMPETITIVE LOCAL EXCHANGE CARRIERS AND INTEREXCHANGE CARRIERS**

1. Applicant must file, in this docket with reference to this decision number,<sup>1</sup> a written acceptance of the certificate granted in this proceeding within 30 days of the effective date of this order.

2. Applicant is subject to the following fees and surcharges that must be regularly remitted. Per the instructions in Exhibit E to Decision (D.) 00-10-028, the Combined California PUC Telephone Surcharge Transmittal Form must be submitted even if the amount due is \$0.

- a. The Universal Lifeline Telephone Service Trust  
Administrative Committee Fund (Pub. Util. Code § 879);
- b. The California Relay Service and Communications Devices  
Fund (Pub. Util. Code § 2881; D.98-12-073);
- c. The California High Cost Fund-A (Pub. Util. Code § 739.3;  
D.96-10-066, at 3-4, App. B, Rule 1.C);
- d. The California High Cost Fund-B (D.96-10-066, at 191,  
App. B, Rule 6.F.; D.07-12-054);
- e. The California Advanced Services Fund (D.07-12-054);
- f. The California Teleconnect Fund (D.96-10-066, at 88,  
App. B, Rule 8.G).
- g. The User Fee provided in Pub. Util. Code §§ 431-435. The  
minimum annual User Fee is \$100, as set forth in  
D.13-05-035.

Note: These fees change periodically. In compliance with Resolution T-16901, December 2, 2004, Applicant must check the joint tariff for surcharges and fees filed by Pacific Bell

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<sup>1</sup> Written acceptance filed in this docket does not reopen the proceeding.

Telephone Company (dba AT&T California) and apply the current surcharge and fee amounts in that joint tariff on end-user bills until further revised. Current and historical surcharge rates can be found at <http://www.cpuc.ca.gov/PUC/Telco/Consumer+Information/surcharges.htm>.

- Carriers must report and remit CPUC telephone program surcharges online using the CPUC Telecommunications and User Fees Filing System (TUFFS). Information and instructions for online reporting and payment of surcharges are available at <http://www.cpuc.ca.gov/PUC/Telco/Information+for+providing+service/Surcharge+Remittance.htm>. To request a user ID and password for TUFFS online filing and for questions, please e-mail [Telco\\_surcharges@cpuc.ca.gov](mailto:Telco_surcharges@cpuc.ca.gov).
- Carriers must file and pay the PUC User Fee (see above item 2g) upon receiving the User Fee statement sent by the Commission. User Fees cannot be reported or paid online. Instructions for reporting filing are available at <http://www.cpuc.ca.gov/PUC/Telco/Information+for+providing+service/userfee.htm>. Please call (415) 703-2470 for questions regarding User Fee reporting and payment.

3. Applicant is a competitive local exchange carrier (CLC). The effectiveness of its future tariffs is subject to the requirements of General Order 96-B and the Telecommunications Industry Rules (D.07-09-019).

4. Applicant is a non-dominant interexchange carrier (NDIEC). The effectiveness of its future NDIEC tariffs is subject to the requirement of General Order 96-B and the Telecommunications Industry Rules (D.07-09-019).

5. Tariff filings must reflect all fees and surcharges to which Applicant is subject, as reflected in #2 above.

6. Applicant must file a service area map as part of its initial tariff.



7. Applicant must obtain a performance bond of at least \$25,000 in accordance with Decision 13-05-035. The performance bond must be a continuous bond (i.e., there is no termination date on the bond) issued by a corporate surety company authorized to transact surety business in California, and the Commission must be listed as the obligee on the bond. Within five days of acceptance of its certificate of public convenience and necessity authority, Applicant must submit a Tier-1 advice letter to the Director of Communications, containing a copy of the license holder's executed bond, and submit a Tier-1 advice letter annually, but not later than March 31, with a copy of the executed bond.

8. Applicant must not allow its performance bond to lapse during any period of its operation. Pursuant to Decision 13-05-035, the Commission may revoke a certificate of public convenience and necessity if a carrier is more than 120 days late in providing the Director of the Communications Division a copy of its executed performance bond and the carrier has not been granted an extension of time by the Communications Division.

9. Prior to initiating service, Applicant must provide the Commission's Consumer Affairs Branch with the name and address of its designated contact person(s) for purposes of resolving consumer complaints. In addition, Applicant must provide the Commission's Communications Division with the name and address of its designated regulatory/official contact persons(s). This information must be provided electronically, using the "Regulatory/Official Contact Information Update Request" found at <http://www.cpuc.ca.gov/PUC/telco/Information+for+providing+service/>. This information must be updated if the name or telephone number changes, or at least annually.

10. Applicant must notify the Director of the Communications Division in writing of the date that local exchange service is first rendered to the public, no later than five days after service first begins.

11. Applicant must keep its books and records in accordance with the Generally Accepted Accounting Principles.

12. In the event Applicant's books and records are required for inspection by the Commission or its staff, it must either produce such records at the Commission's offices or reimburse the Commission for the reasonable costs incurred in having Commission staff travel to its office.

13. Applicant must file an annual report with the Director of the Communications Division, in compliance with GO 104-A, on a calendar-year basis with the information contained in Attachment C to this decision.

14. Applicant must file an affiliate transaction report with the Director of the Communications Division, in compliance with D.93-02-019, on a calendar-year basis using the form contained in Attachment D.

15. Applicant must ensure that its employees comply with the provisions of Pub. Util. Code § 2889.5 regarding solicitation of customers.

16. Within 60 days of the effective date of this order, Applicant must comply with Pub. Util. Code § 708, Employee Identification Cards, and notify the Director of the Communications Division in writing of its compliance.

17. If Applicant is 90 days or more late in filing an annual report, or in remitting the surcharges and fee listed in #2 above, and has not received written permission from the Communications Division to file or remit late, the Communications Division must prepare for Commission consideration a resolution that revokes Applicant's CPCN.

18. Applicant is exempt from Rule 3.1(b) of the Commission Rules of Practice and Procedure.

19. Applicant is exempt from Pub. Util. Code §§ 816-830.

20. Applicant is exempt from the requirements of Pub. Util. Code § 851 for the transfer or encumbrance of property whenever such transfer or encumbrance serves to secure debt.

21. If Applicant decides to discontinue service or file for bankruptcy, it must immediately notify the Communications Division's Bankruptcy Coordinator.

22. Applicant must send a copy of this decision to concerned local permitting agencies no later than 30 days from the date of this order.

**(END OF ATTACHMENT B)**

**ATTACHMENT C****ANNUAL REPORT**

An original and a machine readable, copy using Microsoft Word or compatible format must be filed with the California Public Utilities Commission, State Office Building, 505 Van Ness Avenue, Room 3107, San Francisco, CA 94102-3298, no later than March 31st of the year following the calendar year for which the annual report is submitted.

Failure to file this information on time may result in a penalty as provided for in Pub. Util. Code §§ 2107 and 2108.

Required information:

1. Exact legal name and U # of the reporting utility.
2. Address.
3. Name, title, address, and telephone number of the person to be contacted concerning the reported information.
4. Name and title of the officer having custody of the general books of account and the address of the office where such books are kept.
5. Type of organization (*e.g.*, corporation, partnership, sole proprietorship, etc.).  
If incorporated, specify:
  - a. Date of filing articles of incorporation with the Secretary of State.
  - b. State in which incorporated.
6. Number and date of the Commission decision granting the Certificate of Public Convenience and Necessity.
7. Date operations were begun.
8. Description of other business activities in which the utility is engaged.
9. List of all affiliated companies and their relationship to the utility. State if affiliate is a:
  - a. Regulated public utility.
  - b. Publicly held corporation.

10. Balance sheet as of December 31st of the year for which information is submitted.
11. Income statement for California operations for the calendar year for which information is submitted.
12. Cash Flow statement as of December 31<sup>st</sup> of the calendar year, for which information is submitted, for California operations only.

For answers to any questions concerning this report, call (415) 703-2883.

**(END OF ATTACHMENT C)**

**ATTACHMENT D****CALENDAR YEAR AFFILIATE TRANSACTION REPORT**

**An original and a machine readable, copy using Microsoft Word and Excel, or compatible format must be filed with the California Public Utilities Commission, State Office Building, 505 Van Ness Avenue, Room 3107, San Francisco, CA 94102-3298, no later than May 1st of the year following the calendar year for which the annual report is submitted.**

1. Each utility must list and provide the following information for each affiliated entity and regulated subsidiary that the utility had during the period covered by the Annual Affiliate Transaction Report.

Form of organization (*e.g.*, corporation, partnership, joint venture, strategic alliance, etc.);

Brief description of business activities engaged in;

Relationship to the utility (*e.g.*, controlling corporation, subsidiary, regulated subsidiary, affiliate);

Ownership of the utility (including type and percent ownership);

Voting rights held by the utility and percent; and

Corporate officers.

2. The utility must prepare and submit a corporate organization chart showing any and all corporate relationships between the utility and its affiliated entities and regulated subsidiaries in #1 above. The chart must have the controlling corporation (if any) at the top of the chart, the utility and any subsidiaries and/or affiliates of the controlling corporation in the middle levels of the chart, and all secondary subsidiaries and affiliates (*e.g.*, a subsidiary that in

turn is owned by another subsidiary and/or affiliate) in the lower levels. Any regulated subsidiary must be clearly noted.

3. For a utility that has individuals who are classified as “controlling corporations” of the competitive utility, the utility must only report under the requirements of #1 and #2 above any affiliated entity that either (a) is a public utility or (b) transacts any business with the utility filing the annual report excluding the provision of tariff services.

4. Each annual report must be signed by a corporate officer of the utility stating under penalty of perjury under the laws of the State of California (CCP 2015.5) that the annual report is complete and accurate with no material omissions.

5. Any required material that a utility is unable to provide must be reasonably described and the reasons the data cannot be obtained, as well as the efforts expended to obtain the information, must be set forth in the utility’s Annual Affiliate Transaction Report and verified in accordance with Section I-F of Decision 93-02-019.

6. Utilities that do not have affiliated entities must file, in lieu of the annual transaction report, an annual statement to the Commission stating that the utility had no affiliated entities during the report period. This statement must be signed by a corporate officer of the utility, stating under penalty of perjury under the laws of the State of California (CCP 2015.5) that the annual report is complete and accurate with no material omissions.

**(END OF ATTACHMENT D)**

**ATTACHMENT E**

**SETTLEMENT AGREEMENT**



**SETTLEMENT AGREEMENT**

In order to avoid the costs and risks of further litigation and to expeditiously resolve this matter, the Safety and Enforcement Division of the California Public Utilities Commission (“SED”), and Quality Speaks LLC dba Broadvoice and its predecessors, successors, affiliates, and assigns ("Quality Speaks" or "Applicant") hereby agree upon the following terms for the settlement ("Settlement") of SED's Protest of Quality Speaks' Application for a Certificate of Public Convenience and Necessity (“CPCN”) to Provide Limited Facilities Based and Resold Local Exchange Service, A.14-12-012 ("Application").

**JOINT FACTUAL STATEMENT**

1. Quality Speaks dba Broadvoice is a limited liability company operating and existing under the laws of the State of California, registered with the State on December 17, 2010. Quality Speaks offers voice over Internet-protocol (“VoIP”) services to residential and business customers.
2. Quality Speaks acknowledges that it began providing VoIP services in January 2012.
3. Jim Murphy is the CEO of Quality Speaks and was, in the past, the CEO of Rampage Cellular.
4. In 1999, Jim Murphy sold Rampage Cellular.
5. In 2004, the Commission revoked Rampage Cellular’s competitive carrier authority under Resolution T-16875 for failure to file annual reports and remit surcharges.
6. On December 17, 2014, Quality Speaks, dba Broadvoice, filed its Application for a CPCN pursuant to Rule 2.6 of the Commission’s Rules of Practice and Procedure in order to provide limited facilities based and resold local exchange and interexchange telecommunications services in California. It did not include information regarding Rampage Cellular in its regulatory history.

7. In reviewing the Application, SED uncovered evidence indicating that Quality Speaks violated Rule 1.1 by omitting information regarding Rampage Cellular in its regulatory history. Additionally, Quality Speaks violated PU Code section 285, which requires VoIP providers to collect and remit surcharges to support the CPUC's enumerated public purpose programs.<sup>3</sup> Based on these concerns, SED submitted its Protest to the Application on January 20, 2015.

### **AGREEMENT**

8. Acknowledgement. Quality Speaks acknowledges that PU Code section 285 requires VoIP providers to submit surcharges and that Quality Speaks failed to do so from 2012 to January 2015. Quality Speaks states that it will fully meet its regulatory and legal obligations in the future. Quality Speaks also acknowledges that it failed to disclose its full regulatory history, specifically, that its CEO, Jim Murphy, had previously been the CEO of another company, Rampage Cellular, which lost its competitive carrier authority in 2004 under Resolution T-16875. It failed to make this disclosure because Mr. Murphy sold Rampage Cellular in 1999 and therefore he was unaware that the Commission had revoked Rampage Cellular's authority.

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<sup>3</sup> Section 285 reads in relevant part as follows:

The Commission shall require interconnected VoIP service providers to collect and remit surcharges on their California intrastate revenues in support of the following public purpose program funds:

- (1) California High-Cost Fund-A Administrative Committee Fund under Section 275.
- (2) California High-Cost Fund-B Administrative Committee Fund under Section 276.
- (3) Universal Lifeline Telephone Service Trust Administrative Committee Fund under Section 277.
- (4) Deaf and Disabled Telecommunications Program Administrative Committee Fund under Section 278.
- (5) California Teleconnect Fund Administrative Committee Fund under Section 280.
- (6) California Advanced Services fund under Section 281.

9. Surcharge and Penalty Payment. In order to resolve the legal issues raised by SED in its Protest, Quality Speaks shall pay retroactive state-mandated public purpose program surcharges and the associated interest penalty in the sum of \$40,886.16 as detailed below. In consultation with Communications Division staff, SED directs Quality Speaks to pay retroactive surcharges in the amount of \$34,902.57 within 30 days of the issuance of this decision. Payment shall be made payable to the California Public Utilities Commission and mailed or delivered to the Commission's Fiscal Office at 505 Van Ness Avenue, Room 3000, San Francisco, CA 94102. The check or money order shall include a reference to the decision number incorporating this settlement. Additionally, Quality Speaks shall pay \$5,983.59 in interest penalty for the retroactive state-mandated public purpose program surcharge remittances. Payment shall be made within 30 days of the issuance of this decision. Payment shall be made payable to the California Public Utilities Commission and mailed or delivered to the Commission's Fiscal Office at 505 Van Ness Avenue, Room 3000, San Francisco, CA 94102. The check or money order shall include a reference to the decision number incorporating this settlement.
10. Affidavit. In order to resolve Quality Speaks' violation of Rule 1.1, it must submit a notarized affidavit attesting to the fact that Mr. Murphy sold Rampage Cellular in 1999 within 30 calendar days of the date of the Commission's approval of this Agreement.

### **GENERAL PROVISIONS**

11. Scope and Effect of Agreement. This Agreement represents a full and final resolution of SED's Protest, and the matters giving rise thereto. The parties understand that this Settlement Agreement is subject to approval by the Commission. As soon as practicable after the Parties have signed the Settlement Agreement, a Motion for Commission Approval and Adoption of the Settlement Agreement will be filed. The Parties agree to support the Settlement Agreement, recommend that the Commission approve it in its entirety without change and use their best efforts to secure Commission approval of it in its entirety without modification. The Parties agree that, if the Commission fails to adopt the Settlement Agreement in its entirety without material

change, the Parties shall convene a settlement conference within 15 days thereof to discuss whether they can resolve any issues raised by the Commission's actions. If the Parties cannot mutually agree to resolve the issues raised by the Commission's actions, the Settlement Agreement shall be rescinded and the Parties shall be released from their obligation to support this Settlement Agreement. Thereafter, the Parties may pursue any action they deem appropriate, but agree to cooperate to establish a procedural schedule for the remainder of the proceeding.

12. Successors. This Agreement and all covenants set forth herein shall be binding upon and shall inure to the benefit of the respective Parties hereto, their successors, heirs, assigns, partners, representatives, executors, administrators, subsidiary companies, divisions, units, agents, attorneys, officers, and directors.

13. Knowing and Voluntary Execution. The Parties acknowledge each has read this Agreement, that each fully understands the rights, duties and privileges created hereunder, and that each enters this Agreement freely and voluntarily.

14. Authority to Execute Agreement. The undersigned acknowledge and covenant that they have been duly authorized to execute this Agreement on behalf of their respective principals and that such execution is made within the course and scope of their respective agency or employment.

15. Entire Agreement. The Parties expressly acknowledge that the consideration recited in this Agreement is the sole and only consideration of this Agreement, and that no representations, promises, or inducements have been made by the Parties or any director, officer, employee, or agent thereof other than as set forth expressly in this Agreement.

16. Choice of Law. This Agreement shall be governed by and interpreted in accordance with the laws of the State of California and the rules, regulations and General Orders of the California Public Utilities Commission.

17. Execution in Counterparts. This Agreement may be executed by any of the Parties in counterparts with the same effect as if all Parties had signed one and the same document. All such counterparts shall be deemed to be an original and shall together

constitute one and the same Agreement. A signature transmitted by facsimile shall be regarded as an original signature.

**QUALITY SPEAKS, LLC.**

Dated: July 31, 2015

/s/ KRISTOPHER TWOMEY  
KRISTOPHER TWOMEY

Attorneys for Quality Speaks, LLC  
1725 I Street, NW Suite 300  
Washington, D.C. 20006

**SAFETY AND ENFORCEMENT DIVISION**

Dated: July 31, 2015

/s/ RUDY SASTRA  
RUDY SASTRA

Analyst for the Safety and Enforcement Division  
California Public Utilities Commission  
505 Van Ness Avenue  
San Francisco, CA 94102

Dated: July 31, 2015

/s/ JEFFREY KASMAR  
JEFFREY KASMAR

Supervisor for the Safety and Enforcement Division  
California Public Utilities Commission  
505 Van Ness Avenue  
San Francisco, CA 94102

Dated: July 31, 2015

/s/ CANDACE CHOE  
CANDACE CHOE

Attorney for Safety and Enforcement Division  
California Public Utilities Commission  
505 Van Ness Avenue  
San Francisco, CA 94102

**(END OF ATTACHMENT E)**